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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,995	08/01/2001	Hdei Nunoe	2000.023	5812
30636	7590	04/04/2006		
FAY KAPLUN & MARCIN, LLP 150 BROADWAY, SUITE 702 NEW YORK, NY 10038			EXAMINER ANYA, CHARLES E	
			ART UNIT	PAPER NUMBER
			2194	
DATE MAILED: 04/04/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/920,995

Applicant(s)

NUNOE, HDEI

Examiner

Charles E. Anya

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3/MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 1/20/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

  
WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER

**DETAILED ACTION**

1. Claims 1-7 are pending in this application.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**The following terms lack antecedent in basis:**

- i. "the program code segment" on line 5 of claim 7.

For the purpose of this office action the examiner would change to "the program code segment" to "a program code segment".

- ii. "the privileged processing mode" on line 7 of claim 7.

For the purpose of this office action the examiner would change "the privileged processing mode" to "a privileged processing mode".

**The following terms are unclear:**

- iii. software" on lines 4 and 8 of claim 1.

It is unclear as to whether the software on line 4 is different from the software on line 8. Appropriate clarification is required.

- iv. "software code" on lines 2 and 4 of claim 7.

It is unclear as to whether the software code on line 2 is different from the software code on line 4. Appropriate clarification is required.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. **Claim 7 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claim 7 is directed to a software application, which is software per se, i.e., the descriptions or expressions of the software application, are not physical "things". They are neither a machine, article of manufacture, composition of matter nor statutory processes. Such claimed software application does not define any structural and functional interrelationships between the software application and other claimed elements of a computer, which permit the software application's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a software application is a computer element with defines structural and function interrelationships between the software application and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1538-84, 32 USPQ2d at 1035. Accordingly, it is important to distinguish claims that define descriptive material per se from claims that define statutory inventions.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,175,916 B1 to Ginsberg et al. in view of U.S. Pat. No. 6,542,919 B1 to Wendorf et al.**

8. As to claim 1, Ginsberg teaches a method, comprising: when the current processing mode is a privileged processing mode, executing a direct program flow control instruction to directly access an instruction within software having the privileged processing mode (“...normal function call...” Col. 8 Ln. 6 – 50) and when the current processing mode is an unprivileged processing mode, executing an indirect program flow control instruction to cause execution of the instruction within software having the privileged processing mode (Memory Fault Handler 104 Col. 6 Ln. 59 – 67, Col. 7 Ln. 1 – 20).

9. Ginsberg is silent with respect with determining a current processing mode of an executing software function.

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10. Wendorf teaches determining a current processing mode of an executing software function (figures 2/3 (Steps 203/303) Col. 7 Ln. 1 – 46)).

11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Wendorf and Ginsberg because the system of Wendorf would improve the system of Ginsberg by controlling access to system resources (Wendorf Col. 4 Ln. 24 – 29).

12. As to claim 2, Ginsberg teaches the method of claim 1, wherein the direct program flow control instruction is a jump instruction (“...jump instruction...” Col. 8 Ln. 11 – 17).

13. As to claim 3, Ginsberg teaches the method of claim 1, wherein the indirect program flow control instruction is an interrupt instruction (Memory Fault Handler 104 Col. 6 Ln. 59 – 67, Col. 7 Ln. 1 – 20).

14. As to claim 4, Ginsberg teaches the method of claim 1, wherein the software having; the privileged processing mode is operating system software (“...system function...”/“...system process...” Col. 6 Ln. 44 – 67, Col. 7 Ln. 49 – 60).

15. As to claim 5, Deianov teaches the method of claim 4, wherein the software having the privileged processing mode is kernel software (“...system function...”/“...system process...” Col. 6 Ln. 44 – 67, Col. 7 Ln. 49 – 60).

16. As to claims 6 and 7 see the rejection of claim 1 above.

***Response to Arguments***

17. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**U.S. Pub. No. 2005/0251864 A1 to Kelly: directed a system for invoking a privileged function.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Anya whose telephone number is (571) 272-3757. The examiner can normally be reached on M-F (8:30-5:00).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571) 272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles E Anya  
Examiner  
Art Unit 2194

cea.

  
WILLIAM THOMSON  
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